

DO

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36087]

West Branch Intermediate Holdings, LLC and Continental Rail LLC—Continuance  
in Control Exemption—New Mexico Central Railroad, LLC

West Branch Intermediate Holdings, LLC (West Branch) and Continental Rail LLC (Continental) have filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) for West Branch to continue in control of, and Continental to manage, New Mexico Central Railroad, LLC (NMCR), upon NMCR's becoming a Class III rail carrier. West Branch is a noncarrier limited liability company that currently controls Delta Southern Railroad, Inc. (Delta), a Class III carrier. Continental is a noncarrier formed for the purpose of managing and operating short line railroads.

This transaction is related to a concurrently filed verified notice of exemption in New Mexico Central Railroad—Acquisition & Operation Exemption—Southwestern Railroad, Whitewater Division, Docket No. FD 36085, in which NMCR has filed for authority under 49 C.F.R. § 1150.31 to acquire and operate certain Southwestern assets. In particular, NMCR will acquire Southwestern's leasehold interest in a line between Deming (MP 1134) and Rincon (MP 1080) and Southwestern's ownership interest in lines: between Deming (MP 0.0) and Peruhill (MP 5+3,763 feet); between Peruhill (MP 5+3,763 feet) and Whitewater (MP 30+2,972 feet); between Whitewater (near MP 30+2,972 feet) and the Tyrone Industrial Spur at Burro Mountain Jct. (near MP 33+5,256 feet); between Whitewater

(MP 0+0750 feet) and Santa Rita (MP 16+1,500 feet); and between Hannover, Jct. (MP 14+1,345.4 feet) and the connection line at the Fierro Industrial Spur at the Sharon Steel Plant (near MP 6+1,804 feet). The total Southwestern mileage NMCR will acquire (by purchase or lease) and operate is approximately 116 miles.<sup>1</sup>

The applicants certify that: (1) the carriers that are the subject of this notice do not connect with each other; (2) that this transaction is not part of a series of anticipated transactions that would connect these rail carriers with each other; and (3) the transaction does not involve a Class I carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. § 11323 pursuant to 49 C.F.R. § 1180.2(d)(2).

The earliest the transaction could be consummated is February 16, 2017, the effective date of the exemption (30 days after the verified notice of exemption was filed). The parties expect to consummate the transaction on or about February 17, 2017.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

---

<sup>1</sup> In Docket No. FD 36084, West Branch and Continental have invoked the class exemption at 49 C.F.R. § 1180.2(d)(2) for West Branch to acquire control of, and for Continental to manage, the following Class III rail carriers: Cimarron Valley Railroad, L.C., Clarksdale Arizona Central Railroad, L.C., and Wyoming and Colorado Railroad Company, Inc.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by February 9, 2017 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36087, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave., N.W., Suite 717, Washington, DC 20036.

Board decisions and notices are available on our website at “[WWW.STB.GOV](http://WWW.STB.GOV).”

Decided: January 30, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.